

DISSENTING VIEWS
to the
Judiciary Committee Report
on
H.R. 1829, the "Federal Prison Industries Competition in Contracting Act of 2003"

These views dissent from the Committee Report on H.R. 1829.

Introduction

The Federal Prison Industries program, or FPI, has been around since the 1930's. Under the law, federal agencies are required to buy needed products from FPI if FPI can meet their order. The purpose of the program is to teach prisoners real work skills so that when they are released from prison they will be able to find and hold jobs to support themselves and families and be less likely to commit more crimes.

And it is clear that the program works to do just that. Followup studies covering as much as 16 years of data have shown that inmates who participate in prison industries are 14% more likely to be employed and 25% less likely to commit crimes than like cohorts who did not participate in the program. While this certainly benefits offenders and their families, that is beside the point from a public policy perspective. The real benefit to all of us is that, as a result of this program, we are less likely to be victims of crime.

What the Bill Does

H.R. 1829 would immediately eliminate the current "mandatory source" procurement authority for federal agency purchases from Federal Prison Industries (FPI). While the bill provides for an agency option to purchase goods from FPI on a non-competitive basis which is phased out over a 5-year period, there should be no mistake -- the mandatory source rule in effect today would be eliminated immediately upon the effective date of this bill becoming law. The 1934 law required purchases by federal agencies to ensure work opportunities for inmates. The law recognizes that prison work operations are necessarily less efficient, less productive and more costly to run when compared to private work conditions, given the high level of security and control that must be maintained, no or very low beginning work skills among the workforce, and the objective of labor intensive activities to maximize the number of inmates employed. It is estimated that it takes about 4 inmates to equate to the production of one private worker.

Ironically, most of the adverse impact of this bill will fall on private sector companies and their workers. FPI would not exist, and certainly could not offer quality products and services without the direct support of private sector companies that provide the raw materials and services FPI needs to produce its products. Each of these companies responded to solicitations issued by FPI (as a Federal agency, FPI follows all the Federal procurement regulations) and were awarded the contracts through competitive procedures. In order to fulfill their contractual obligations, these companies have hired law-abiding citizens as staff, added equipment, and some have even opened

entire new plants. Many of these companies have FPI contracts which extend 5-10 years.

Last year, FPI spent 74 percent of its sales revenue on purchases of raw materials, equipment, supplies, and services from private sector companies, 62% of which were purchased from small businesses including women, minorities and those who are disadvantaged. These expenditures totaled close to \$500 million last year. The private sector companies involved have played by the rules, competing fair and square for the contracts. They and their employees do not deserve to be on the receiving end of an unjustified animus toward inmates or FPI.

In addition to restrictions on FPI's ability to produce products for federal agency sales, the bill severely restricts the ability of FPI to obtain service contracts. An alternative currently employed by FPI to increase federal market share for products, that also reduces reliance on mandatory source, is performing services for companies which are currently being performed in foreign countries (mandatory source has never applied to services). Service contracts will be prohibited under the bill, except for federal government service contracts competitively acquired.

The bill, which is purportedly designed to reform federal prison industries, also prohibits state service contracts. These restrictions will also hurt private sector businesses more than prisoners. The combined impact of the federal and state prohibitions on service contracts with private businesses will have the effect of eliminating a substantial number of federal and state prison industries service contracts where free workers will lose their jobs. One such example involves contracts with Delco Remy wherein prisoners perform services that companies are not able to get free workers to perform such as stripping useful parts and ingredients from old batteries which are then reused in products constructed by free workers. In Virginia alone, it is estimated that hundreds of free workers will lose their jobs. It is likely that these jobs will end up leaving the U.S. as the services performed by inmates are moved to foreign operations where the company can find workers willing to do the work now performed by inmates in this country.

Finally, the bill will have an unintended discriminatory effect upon small, minority and women-owned businesses. Of all the purchases made by FPI, roughly two thirds are made from small, women and minority owned and disadvantaged businesses. This is one of the highest rates among all Federal agencies. It is well established that small businesses create more jobs per dollar of revenue than large businesses. Accordingly, to the extent that FPI's sales decline, the hardest hit will be the socio-economically disadvantaged businesses which are deliberately targeted to provide them federal procurement opportunities.

Of course, the adverse effects of program reduction will also disproportionately affect minority inmates since racial and ethnic minorities are disproportionately represented among the inmate population. Their representation in FPI jobs, however, mirrors their overall representation. Important, research on the value to inmates of working in prison industries jobs demonstrates that these minority inmates benefit at a higher rate than majority group members regarding their likelihood of remaining crime-free and being successfully employed upon release. Thus, job reductions in FPI of the magnitude certain to occur under the bill will fall hardest on racial and ethnic minorities.

Some suggest that vocational education is a good substitute for FPI work experience. The bill provides authority for increased vocational training programs. A vocational education program typically runs for 2 years or less and is generally thought better to be provided toward the end of the sentence. The average sentence for prisoners in the federal system is 8 years. Whenever the vocational training is provided, the question becomes what to do with the other 6 years of the sentence prior to or after completion of what is considered a beneficial period of vocational education.

All able-bodied inmates in the federal system are required, by law to work. Yet, few offenders enter prison with marketable work skills. The vast majority do not have even credible work habits such as showing up for work on time each day, and working cooperatively and productively with others. Such habits are required to maintain an FPI job just as they are required to obtain and maintain a job in the free world. While vocational education is important and ought to be available to all inmates, no amount of educational course work can substitute the real world workplace experience of a job.

The bill also provides an authorization for FPI to make products and donate them to non-profit organizations as a way to maintain work opportunities for inmates. Producing products to give to charitable organizations simply means replacing the business generated from their now having to purchase the items from a private business, and it means transferring to the tax payer costs for a program that is currently wholly self-supporting. Funding for these two initiatives, increased vocational education and donating inmate made products to charitable organizations, is authorized from the Department of Justice Asset Forfeiture Fund and/or from appropriated funds. Although it is improbable that any funding will be made available from these two sources, even with funding, the programs are not likely to make up for many of the jobs that will be lost due to elimination of the mandatory source program.

Leading up to and during markup of the bill before the full Judiciary Committee, compromises were offered by Rep. Bobby Scott and Rep. Mark Green to preserve a reasonable level of inmate work opportunities through a reformed, but viable, FPI program. Rep. Scott requested that the bill be amended to authorize the piloting of certain new sources of inmate work opportunities through FPI, including federal "PIE" (Prison Industries Enterprise) program making products for companies that are now wholly made outside the US, to authorize contracts with charitable organizations for products and services to assist the charities, to eliminate the restrictions on service contracts and to allow a phase out of the mandatory source provision as these operations replaced it. Rep. Green offered an amendment at full committee to allow the Attorney General to re-institute mandatory source should he deem it necessary to avoid disorder or disruption in a prison. Neither offer was accepted. Several other compromises were put forth, as well, but none was accepted and no compromise was offered by proponents of the bill that affected the basic provisions of the bill. A final offer of the Chairman of the Committee to further discuss a possible compromise during the pendency of the bill for floor consideration in exchange for Rep. Scott withdrawing his amendments (which he did), but no compromise has emerged.

FPI Operations

The total revenues of FPI represent a very small percent (currently about 1/4 of one 1%) of total

federal agency procurement dollars and only 4.5% of the overall federal market in the approximately 250 products it produces in the federal supply codes in which it operates. The furniture and apparel industries are the two industries in which FPI produces the highest volume of work. When asked, representatives of these industries conceded that FPI sales represent an "insignificant" and "negligible" portion of their industries, respectively. If such industries are having problems, it is clearly not due to the impact of FPI. In textiles, for example, it is said that over 600,000 jobs were lost during the past 10 years. There are roughly 7,000 prisoners working in textiles in FPI. Clearly, the blame for the loss of 600,000 jobs cannot be a few thousand prisoners. The same is true of revenue reductions and job loss due to economic downturns in the office furniture business.

With the elimination of parole, good conduct credits, Pell grants, and other positive incentive programs, the federal prison system has little to offer as ongoing incentives for self development. The one shining exception is FPI. Non-FPI inmate jobs pay from about \$.12 an hour to about \$.36 cents an hour. The average non-FPI inmate job pays \$.23 an hour. The majority of non-FPI inmates work for less than \$23 per hour. FPI jobs pay from \$.23 to \$1.15 per hour with the average pay being \$.93 per hour. To hold down an FPI job, an inmate must have completed high school or be making steady progress toward obtaining a GED, and maintain a record of good behavior. This is true not only for those already in an FPI job, but also for those on the waiting list for a job, as well as those seeking to establish eligibility to be placed on the waiting list. Contributions to inmate development and prison management are important, but the least important of FPI's contributions. Reductions in crime, restitution payments to crime victims and support payments to inmate dependants are far more compelling reasons for the program.

It is readily conceded that there are problems with FPI which should be fixed. When a small business making a single client product, such as Army helmets, depends on DoD contracts for its operations, FPI should not be able to take that business away. But this bill should be fixing the program - not gutting it by taking away all of its primary business sources all at once. While the bill suggests that the lack of competition is the problem, the bill seeks to strangle-hold FPI as a competitor not only by strengthening the prohibition against activities in the commercial market, but in the government market, as well. We are already seeing the effects of the DoD restrictions on FPI procurement passed last Congress. Information obtained from the program indicates that it has had to close 13 factories and eliminate over 1700 inmate jobs and expects to eliminate 500 additional inmate jobs before the end of this year.

We should fix the problems, but we should do so in ways that assure the viability of this vital crime reducing program. With additional prisons scheduled to come on line over the next few years, we can ill afford to diminish this successful crime reduction programs. But for their crimes and imprisonment, prisoners are indistinguishable from the rest of us. Treating them as if they are foreign competitors and viewing contracts in FPI as contracts a private business could have, should not be the policy of the Committee with oversight responsibility for the safe and efficient operation of our prisons, or of the Congress, which ultimately has that responsibility. About 98% of prisoners serving time will eventually return to society and our oversight focus should be on their rehabilitation and productive return as a matter of public safety. We can do better than this, and we should.